KEDAI PAJAK SHIN NGIEN SDN BHD v. PP

COURT OF APPEAL, PUTRAJAYA
KAMALUDIN MD SAID JCA
SUPANG LIAN JCA
AHMAD NASFY YASIN JCA
[CRIMINAL APPEAL NO: B-09-244-09-2020]
24 MAY 2023
[2023] CLJ JT(15)

Abstract – *Legislators confined pawnbrokers within the realm of 'pawnbroking business' to ensure the business operates in a transparent, secure and safe manner so as to be effectively monitored and regulated to ensure compliance with laws and regulations. In this light, sale of unredeemed pledges in the pawnbroker's business premises, in contravention of s. 16(3) of the Pawnbrokers Act 1972, constitute a distinct and separate business transaction, ie, sale of second-hand goods; not an integral part of 'pawnbroking business'.*

PAWNBROKERS: *Pawned articles – Sale of – Pawnbroker selling unredeemed pledges at business premises – Charge under s. 16(3) of Pawnbrokers Act 1972 – Whether prohibited from conducting or transacting any form of business other than that of 'pawnbroking' – Whether unredeemed items acquired either through auction or direct ownership – Whether sale of unredeemed pledges constitute integral part of 'pawnbroking business' – Whether sale of unredeemed pledges amounts to sale of second-hand goods*

STATUTORY INTERPRETATION: *'pawnbroking business' – Pawnbrokers Act 1972, s. 16(3) – Whether selling of unredeemed pledges constitute part of pawnbroking business – Word 'includes' in s. 16(3) – Whether connotes non-exhaustive and open ended*

The appellant was charged under s. 16(3) of the Pawnbrokers Act 1972 ('Act'), for selling unredeemed pledges at its business premises. At the trial, incontrovertible evidence was adduced to establish that the appellant was a registered pawnshop with a valid licence from the Ministry of Housing and Local Government ('KPKT'). The gold items sold at the appellant's premises were unredeemed items which were acquired by the appellant either through an auction or direct ownership under s. 23(1) of the Act. The Magistrate convicted the appellant as charged and imposed a fine of RM9,000, holding that selling unredeemed gold could not be included in the definition of pawnbroking business. On appeal, the High Court upheld the conviction but varied the sentence by reducing the fine to RM5,000. Hence, this appeal on the following issues for the court's determination: (i) what constitutes 'pawnbroking business' under s. 16(3) of the Act; (ii) whether selling of

unredeemed pledges in the business premises is also part of pawnbroking business; and (iii) whether the act of selling unredeemed pledges by the pawnee in the business premises amounts to an offence under s. 16(3) of the Act.

Held (dismissing appeal; affirming conviction and sentence)
Per Supang Lian JCA delivering the judgment of the court:

(1) Section 16(3) of the Act stipulates that a pawnbroker is prohibited from conducting or transacting any form of business other than that of 'pawnbroking'. The definition of 'pawnbroking business' in s. 2 of the Act employs the expression 'includes', which indicates enlargement or non-exhaustiveness. However, an exception exists where the context of the statute evinces that the word 'includes' is not merely being employed to expand the meaning of a term, but rather to furnish a comprehensive elucidation of what that term denotes for the purposes of the statute. In such instances, the word 'includes' can be construed to mean 'mean and include'. This has the effect of conferring exclusive meaning to the definition as stipulated in the interpretation clause, within the ambit of the statute. Hence, the term amplifies the scope of the definition, rendering it non-exhaustive and unrestricted. (paras 14, 16, 21, 32, 33 & 38)

(2) The unembellished and customary meaning of pawnbroking business essentially refers to an individual or entity engaged in the act of advancing funds for commercial purposes by granting a loan in exchange for the provision of a security item. If the loan amount was not repaid within the stipulated timeframe, then the pledged item may be disposed of by the pawnbroker. The underlying aim of the Act is not confined to solely safeguarding the interest of the pawner, but also extends to the protection of the safety and security of the items that are pledged as collateral. This objective resonates with the provisions of s. 16(3) of the Act which unequivocally proscribes the sale of unredeemed pledges to customers within the same premises, owing to the perilous nature of the lending practices that are typically associated with pawnshops. (paras 38, 39 & 41)

(3) The transaction of pawnbroking business concludes once the article becomes the possession of the pawnbroker in the event of the failure by the pawner to redeem the article. The selling of the unredeemed pledges constitutes a distinct and separate business, namely the selling of second-hand goods. It occurs after the pawning transaction has ended and thus does not fall under the purview of pawnbroking business. Therefore, the selling of unredeemed pledges in the business premises of the pawnbroker does not constitute an integral part of pawnbroking business. (paras 40, 43 & 56)

(4) The appellant had failed to establish the existence of a trade custom and practice to sell unredeemed gold in the premise as part of the pawnbroking business. There was glaring absence of any proof to suggest that such practices were customary and prevalent amongst all pawnbrokers in Malaysia. Further, contrary to the appellant's position that sale of gold had been a longstanding practice until KPKT's direction two years before, the legislative prohibition had in fact been firmly in place since 1972, spanning over half a century. Also, the Act, being the special legislation, takes precedence over general law. Section 129 of the Contracts Act 1950 has no application in this case. (paras 44, 46-48 & 51)

Case(s) referred to:
Devonald v. Rosser & Sons [1906] 2 KB 728 ***(refd)***
Dilworth v. Commissioner Of Stamps [1899] AC 99 ***(refd)***
Majlis Perbandaran Klang v. Generation Products Sdn Bhd [2006] 2 CLJ 1151 CA ***(refd)***
Pentadbir Tanah Daerah Timur Laut, Pulau Pinang v. Yeoh Oon Theam [2017] 3 CLJ 557 CA ***(refd)***
PP v. Chew Siew Luan [1982] CLJ 354; [1982] CLJ (Rep) 285 FC ***(refd)***
Selva Vinayagam Sures v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2021] 2 CLJ 29 FC ***(refd)***
Tan Kah Fatt & Anor v. Tan Ying [2023] 2 CLJ 169 FC ***(refd)***
Tan Sri Datuk Paduka (Dr) Ting Pek Khiing v. Hu Chang Pee [2011] 9 CLJ 859 CA ***(refd)***
Tenaga Nasional Bhd v. Majlis Daerah Segamat [2022] 2 CLJ 497 FC ***(refd)***
Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd [2002] 3 CLJ 624 CA ***(refd)***
Yii Ming Tung v. PP [2014] 9 CLJ 1102 CA ***(refd)***

Legislation referred to:
Contracts Act 1950, s. 129
Courts of Judicature Act 1964, s. 50(2)
Criminal Procedure Code, s. 399
Dangerous Drugs Act 1952, s. 2
Interpretation Acts 1948 and 1967, s. 17A
Local Government Act 1976, s. 2
Limitation Act 1953, s. 2(1)
Medical Act 1971, s. 34C
Pawnbrokers Act 1972, ss. 2, 3, 16(3), 23(1)(b)

Other source(s) referred to:
NS Bindra, *Interpretation of Statutes,* 8th edn, p 45

For the appellant - J Amardas & Terrence Chan; KP Ng & Amardas
For the respondent - Dhiya Syazwani Izyan Mohd Akkhir; DPP

[Editor's note: For the High Court judgment, please see Kedai Pajak Shin Ngien Sdn Bhd lwn. PP [2020] 1 LNS 2022 (affirmed).]

Reported by S Barathi

A

JUDGMENT

Supang Lian JCA:

Introduction

[1] Kedai Pajak Shin Ngien Sdn Bhd, the appellant in this case, was B charged under s. 16(3) of the Pawnbrokers Act 1972 in the Magistrate's Court for selling unredeemed pledges in its business premises. The charge reads as follows:

> Bahawa kamu pada 01.03.2017 jam lebih kurang 11.30 pagi bertempat di premis Kedai Pajak Shin Ngien Sdn Bhd yang beralamat di No. 631, Jalan C Satu, Seri Setia, Sungai Way, 47300 Petaling Jaya, Selangor telah didapati sebagai pemegang lesen pemegang pajak gadai telah menjalankan perniagaan emas selain daripada perniagaan pajak gadai. Oleh demikian kamu telah melakukan satu kesalahan di bawah Seksyen 16(3) Akta Pemegang Pajak Gadai 1972 (Akta 81) dan boleh dihukum di bawah Seksyen 41A Akta yang sama. D

[2] The appellant pleaded not guilty to the charge. At the trial, incontrovertible evidence was adduced to establish that the appellant is a registered pawnshop with a valid licence from the Ministry of Housing and Local Government (KPKT). The raiding officer, SP1, during the inspection E at the pawnshop, found that there were gold items being displayed together with their price tags and weight at the pawnshop. It was not disputed that the gold sold in the appellant's premises were unredeemed items which were acquired by the appellant either through an auction or direct ownership under s. 23(1) of the Pawnbrokers Act 1972 ("PA 1972" or "the Act").

F **[3]** Hence, the only question of law that needs to be determined is whether the act of the appellant selling unredeemed gold in its premises is an offence under s. 16(3) of the PA 1972.

Decision Of The Learned Magistrate

G **[4]** At the end of the case for the defence, the learned Magistrate convicted the appellant as charged and imposed a fine of RM9,000.

[5] On the issue of whether selling unredeemed gold can be considered as part of the pawnbroking business, the Magistrate held that selling unredeemed gold cannot be included in the definition of pawnbroking H business based on the following:

(i) after analysing the relevant provisions of the PA 1972, the Magistrate concluded that the Act provides a specific definition of pawnbroking business, which includes taking articles in pawn without further reference to the selling of unredeemed gold on the premises for the I purpose of debt recovery. However, s. 23(1)(b) of the Act does not provide for the selling of unredeemed items on the premises. Instead, it

requires such items to be auctioned by a licensed auctioneer. This interpretation is in line with the statutory provisions and ensures that the interests of all parties involved in the transaction are protected;

(ii) in interpreting the definition of pawnbroking business, the Magistrate referred to the Pawnbrokers Regulation (Control and Licensing) Regulations 2004. The regulations do not mention whether the selling of gold is allowed or not. However, when read as a whole, it is clear that the main objective of pawnbroking is to provide loans by taking an article as security. This reinforces the Magistrate's conclusion that the selling of gold is not part of the pawnbroking business;

(iii) the Magistrate also consulted the KPKT's website and found that the transaction report form required by KPKT only contains details on the value of the pawn, the individual's details, and the redeemed and unredeemed articles involving an auction. There is no mention of reports on selling gold or the number of customers buying such gold. This further supports the conclusion that the selling of gold is not part of the pawnbroking business;

(iv) the Magistrate also considered the entire process of pawning at a pawnshop, from the initial transaction of bringing the article to be pawned for a loan to the issuance of pawn tickets and entry of the transaction in books. If the pawner fails to redeem the item before the expiration date, the pledge becomes the property of the pawnbroker if the sum is less than RM200. If the sum exceeds RM200, it must be disposed of *via* an auction conducted by a licensed auctioneer. Based on this process, the learned Magistrate concluded that the selling of gold is not part of the activities in the pawnbroking business and is inconsistent with the main function of a pawnshop, which is to provide a loan over a pledge as security;

(v) the Magistrate also pointed out that s. 3 of the PA 1972, which pertains to persons deemed to be pawnbrokers, does not provide for any buying or selling of gold or gold business on the premises to be included in the definition of pawnbroking business. The section provides that pawnbrokers are engaged in the business of taking articles in pawn as security for a loan. Therefore, the selling of gold is not considered part of the pawnbroking business. Section 3 of PA 1972 provides:

> Any person who:
>
> (a) receives or takes of or from any person whomsoever any article by way of security for the repayment of any sum of money, not exceeding ten thousand ringgit, advanced thereon; or

A (b) purchases or receives or takes in articles and pays or advances or lends thereon any sum of money, not exceeding ten thousand ringgit, with or under an agreement or understanding expressed or implied or to be from the nature and character of the dealing reasonably inferred that those articles may afterwards be redeemed or repurchased on any terms,

B shall be deemed to be a person carrying on the business of taking articles in pawn, and every such transaction, article, payment, advance and loan shall be deemed a pawning, pledge or loan respectively within this Act.

C (vi) the Magistrate found the appellant's contention that the selling of unredeemed gold is a customary and trade practice to be a recent invention, manufactured by the defence as it was not advanced during the prosecution stage. The Magistrate further found that the appellant had not substantiated its claim that such a practice is uniformly observed among all pawnbrokers in Malaysia;

D (vii) in addition, the Magistrate was of the view that the appellant's submission regarding trade practice could not be accepted as the Pawnbrokers Act was enacted as far back as 1972 and has been operational in conjunction with enacted regulations governing pawnbroking activities. The Magistrate also opined that customs and

E trade practices, being an unwritten law, cannot apply in the face of extant statute law such as the Pawnbrokers Act of 1972.

[6] Aggrieved by the decision of the Magistrate's Court, the appellant appealed to the High Court.

F **At The High Court**

[7] The High Court on appeal, upheld the conviction but varied the sentence by reducing the fine to RM5,000.

[8] On the issue of whether selling unredeemed gold can be considered as

G part of pawnbroking business, the learned High Court Judge held that selling unredeemed gold cannot be included in the definition of pawnbroking business because:

(i) section 16(3) of the Act is perspicuous and expressed clearly, stipulating that no licensee is authorised to employ the licensed premises to transact

H or conduct any business other than that of pawnbroking;

(ii) in accordance with the clear definition of pawnbroking business and the unequivocal language of s. 16(3), the High Court Judge rejected the appellant's submission that the word 'includes' in the definition of pawnbroking business carries any weight or significance. The High

I Court Judge held that where a provision is explicit and unambiguous,

the appellant cannot contort its meaning to justify their actions. The court, having determined that there is no gap or uncertainty in the definition of pawnbroking business, there can be no recourse to the common law definition of pledge;

(iii) finally, the High Court Judge held that s. 23 of the Act is unequivocal and prohibits the sale of unredeemed articles in the licensed premises, which is only authorised to engage in pawnbroking business.

Leave To Appeal

[9] On 3 September 2020, the Court of Appeal had granted to the appellant leave to appeal pursuant to s. 50(2) of the Courts of Judicature Act and allowed the question of law as follows to be determined by the Court of Appeal:

> samada aktiviti menjual barang-barang pajak gadai yang tidak ditebus merupakan sebahagian daripada aktiviti pajak gadai yang dibenarkan di bawah Seksyen 16(3) Akta Pemegang Pajak Gadai 1972
>
> (Whether activities of selling unredeemed pledges is part of the pawnbroking business under section 16(3) of the Pawnbrokers Act 1972)

[10] The appellant thereafter filed a notice of appeal dated 17 September 2020 against the decision of the High Court in respect of the conviction under s. 16(3) of the Pawnbrokers Act 1972 and the sentence of fine of RM5,000 imposed on the appellant.

[11] It is our observation that the above question of law involves public interest and apparently, has not been heard and decided by this court before.

In The Court Of Appeal

[12] We agree with learned counsel for the appellant that flowing from the question of law framed above three legal issues arise to be determined by this court, namely:

(i) what constitutes 'pawnbroking business' under s. 16(3) of the PA 1972;

(ii) whether selling unredeemed pledges in the business premises is also part of the pawnbroking business; and

(iii) whether the act of selling unredeemed pledges by the pawnee in the business premises amounts to an offence under s. 16(3) of the Act.

First Issue: What Constitutes 'Pawnbrokinq Business' Under s. 16(3) Of The PA 1972?

[13] Section 16(3) of the Act provides that:

> (3) No licensee shall use the licensed premises for the conduct or transaction of any business other than that of pawnbroking.

[14] Thus, s. 16(3) stipulates that a pawnbroker is prohibited from conducting or transacting any form of business other than that of 'pawnbroking'. The crucial question is, what constitutes pawnbroking within the ambit of s. 16(3) of the PA 1972?

[15] In this regard, reference is made to s. 2 of the Act which defines 'pawnbroking business' as:

> "pawnbroking business" **includes** the business of taking articles in pawn; (emphasis added)

[16] It is immediately apparent that s. 2 employs the expression 'includes' to define pawnbroking business. Thus, it is imperative to ascertain the import of the word 'includes' in the definition of pawnbroking business, which will shed light on the issue at hand.

Contentions Of The Parties

[17] The appellant argued that the word 'includes' in the definition of pawnbroking business is non-exhaustive.

[18] On the other hand, the respondent contended that the word cannot be read to enlarge the meaning of pawnbroking business to include selling of gold nor selling of unredeemed gold as the disposal of unredeemed gold has been specifically covered under s. 23 of the Act which provides as follows:

> (1) If any pledge shall not have been redeemed before the expiration of six months from the date of pawning, or of such longer period as may have been agreed between a pawnbroker and the pawner, or as may have been required in accordance with section 19, the pledge:
>
> (a) if pawned for a sum not exceeding two hundred ringgit shall become the property of the pawnbroker; or
>
> (b) if pawned for a sum exceeding two hundred ringgit shall when disposed of by the pawnbroker be disposed of by sale by auction to be conducted by a licensed auctioneer.

[19] The respondent draws a comparison with s. 2 of the Dangerous Drugs Act 1952 where the definition of 'trafficking' is as follows:

> "trafficking" includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug otherwise than under the authority of this Act or the regulations made under the Act;

[20] Hence, the respondent asserted that if selling gold in a pawnbroking premise is to be included as pawnbroking business, the PA 1972 would be enacted the same way as the Dangerous Drugs Act 1952 by listing it specifically.

Our Decision On The First Issue

[21] We are of the opinion that the word 'includes' in the definition of pawnbroking business indicates enlargement or non-exhaustiveness. As a general rule, the word 'includes' in the interpretation part of a statute is a word of extension and has the effect of enlargement. This has been consistently decided in several Federal Court decisions.

[22] In *Tan Kah Fatt & Anor v. Tan Ying* [2023] 2 CLJ 169; [2023] MLJU 72, in determining the meaning of 'issue' in the Distribution Act 1958, the Federal Court held:

> [68] It is immediately apparent that both terms deploy different interpretation features. The term "issue" utilises the word "includes" while "child" is defined in more definitive language with the word "means". *Generally, the presence of the word "includes" in the definition of a term suggests an enlarging or non-exhaustive definition as opposed to the use of the more definitive or comprehensive word "means", found in the definition of "child".*
>
> ...
>
> [70] In *Public Prosecutor v. Gan Boon Aun* [2017] 3 MLJ 12; [2017] 4 CLJ 41; [2013] 5 AMR 929, the Federal Court ruled that Article 160(2) is a non-exhaustive definition due to use of the word 'includes', whilst in *Tenaga Nasional Bhd v. Majlis Daerah Segamat* [2022] 2 MLJ 119; [2022] 2 CLJ 497; [2022] 3 AMR 1 the apex Court observed that "the word "includes" will generally have an expansive, illustrative and or explanatory meaning, unless the statutory context in which it appears indicates that it must have an exhaustive meaning. *The Court needs to look at the statute in its full context to see what the statute in its entirety provided for".*
>
> [71] Further, the presence of such a word generally enlarges the meaning of the word or phrase occurring in the body of the statute; that *"when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include"*, as per Lord Watson in *Dilworth v. Commissioner of Stamps* (*supra*) 105.
>
> [72] In discerning the meaning of "issue" in Act 300, it is noticed that the definition in section 3 actually does not explain what the term itself means. The definition instead provides for the scope or prescription of meanings that may fall within its group of meanings (*sui generis*), enlarging the primary meaning, in which case its ordinary or natural meaning must first be discerned. (emphasis added)

[23] In another decision of *Tenaga Nasional Bhd v. Majlis Daerah Segamat* [2022] 2 CLJ 497 at p. 531; [2022] 2 MLJ 119 at pp. 149 to 150, the Federal Court, in determining whether machinery fell under the definition of 'land' in s. 2 of the Local Government Act 1976, held:

A [87] In summary, *it is our observation that the word 'includes' will generally have an expansive, illustrative and or explanatory meaning, unless the statutory context in which it appears indicates that it must have an exhaustive meaning. The court needs to look at the statute in its full context to see what the statute in its entirety provided for.*

B [88] In the present appeal, as noted earlier, the definition of the term 'building' is a descriptive definition. It consists of a long list of 28 items and ends with the qualifying words in the definition 'any other structure, support or foundation'. More importantly, such a big item like electrical structures/machineries are not included in the definition although the definition of the term 'building' appears to be descriptive and very detail. C Apart from that, the word 'structure' in the qualifying words is not part of the specific descriptions or things comprising 'building'. The word 'structure' appears in the phrase 'any other structure, support or foundation', appears in broad terms.

[89] Looking at the definition of the word 'building' in its full context, the D word 'structure' should be read in the context of giving 'support' or providing the 'foundation' to the building. Therefore, in our opinion, the word 'includes' in the definition of the word 'building' was not intended to expand the meaning of the 'building' but to cover all structures that support or provide foundation to the building but under different names.
(emphasis added)

E **[24]** The Court of Appeal in *Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd* [2002] 3 CLJ 624 at p. 632; [2002] 2 MLJ 707 at p. 714, explained the meaning of the word "includes" in the following terms (per Gopal Sri Ram JCA (as he then was)):

F Particular emphasis is to be placed upon the word "includes" in this definition. *On settled principles of statutory interpretation, it is clear that when an Act of Parliament employs the expression 'includes' to define some other word or expression, the intention is to leave the meaning of the expression defined open ended.* By contrast, when the word 'means' is employed to define something, there is a rebuttable presumption of statutory interpretation that G Parliament intends to restrict the meaning of the expression defined.
(emphasis added)

[25] In *Yii Ming Tung v. PP* [2014] 9 CLJ 1102 at p. 1113; [2015] 3 MLJ 596 at p. 605, the Court of Appeal in deciding on the issue of whether the autopsy report of Dr Savior Selva Suresh MD, a forensic specialist at Sibu H General Hospital, admitted under s. 399 of the Criminal Procedure Code, was inadmissible because Dr Suresh was not a medical doctor authorised under s. 34C of the Medical Act 1971, held that:

[22] The emphasis is on the word 'includes' in the definition of the terms 'government medical officer' or 'medical officer' in s. 2 of the CPC. In our I view the choice of the word 'includes' instead of the word 'means' by the draftsman or the legislature in the above definition is deliberate. It is to show that the reference to 'government medical officer' or 'medical

officer' under the relevant section is not confined to a medical officer, either provisionally registered or fully registered, who is employed by the Government of Malaysia and appointed to a medical service in the public service of Malaysia. **The usage of the word 'includes' in the definition is to extend the meaning of the term 'government medical officer'** to embrace any other medical officer who is not a member of the medical service in the public service of Malaysia or in the employment of the Government of Malaysia and deemed to be a government medical officer or a medical officer for the purpose of s. 399(2) of the CPC if such medical officer is authorised in writing by the Director General of Health pursuant to s. 34C of the Medical Act 1971. What this means is that, a fully registered medical practitioner who is a private practitioner may be authorised by the Director General of Health of Malaysia under the said section of the Medical Act 1971 for the purpose of the CPC.

(emphasis added)

[26] According to NS Bindra in his textbook, *Interpretation of Statutes* (8th edn at p. 45):

'Include' is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they should include.

The word 'include' is susceptible of another construction which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expression defined.

When it is mentioned that a particular definition 'include' certain things, it should be taken that the Legislature intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question; but it cannot be taken to be exhaustive? The Legislature uses the word 'means' where it wants to exhaust the significance of the term defined and the word 'include' when it intends that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative but not exhaustive.

Exception To The General Rule

[27] Nonetheless, there is an exception to the general rule of the expansion and non-exhaustive nature of the word 'includes'. Lord Watson spoke of this exception in *Dilworth v. Commissioner Of Stamps* [1899] AC 99 at 105, in these terms:

> The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. *But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include' and, in that case, it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.* (emphasis added)

[28] There are also cases where it was decided that the word 'includes' does not offer enlargement of the definition.

[29] In *Pentadbir Tanah Daerah Timur Laut, Pulau Pinang v. Yeoh Oon Theam* [2017] 3 CLJ 557; [2016] MLJU 1128, the Court of Appeal speaking through Abdul Rahman Sebli JCA (as he then was) in determining whether the use of the word "includes" in s. 2(1) of the Limitation Act has so enlarged the meaning of the word "action" that it must include within its scope the appellant's act of issuing the notice of demand under the Land Code held that:

> [34] We have to say, with all due respect to the learned JC, that the proposition is untenable as the interpretation is repugnant to sections 6(1)(d) and 6(4). It is of crucial importance to appreciate that section 2(1) begins with the caveat *"In this Act, unless the context otherwise requires". The context in our view does not require the meaning of the word "action" in section 2(1) to be enlarged so as to include within its scope such statutory acts as the issuance of a notice of demand by the appellant.*
>
> [35] To our minds, that will be stretching the meaning of is the word "action" beyond what section 2(1) requires in its application to sections 6(1)(d) and 6(4). It will lead to an absurd result whereby all similar administrative acts by the relevant authorities having similar statutory powers as those exercisable by the appellant will be subject to limitation of action under the Limitation Act although the exercise of such powers does not involve any "proceeding in a court of law".
>
> (emphasis added)

[30] In *Majlis Perbandaran Klang v. Generation Products Sdn Bhd* [2006] 2 CLJ 1151; [2006] 4 MLJ 635 at 643, the Court of Appeal in interpreting the word 'includes' in the definition of 'action' in s. 2 of the Limitation Act 1953 held as follows:

> [15] We are in agreement with the appellant that the word 'includes' in the definition of 'action' is not capable of being enlarged. In our view, the definition of the word 'action' in s. 2(1) refers only to proceedings or suits in a court of law. This is strengthened by the fact that limitation could only be raised as a defence.

[31] Based on the aforementioned cases, it can be deduced that the canon of interpretation postulates that the word 'includes' in a definition section is intended to augment the ambit of the specified definition, rendering it non-exhaustive in nature.

[32] However, it must be noted that an exception exists where the context of the statute evinces that the word 'includes' is not merely being employed to expand the meaning of a term, but rather to furnish a comprehensive elucidation of what that term denotes for the purposes of the statute. In such instances, the word 'includes' can be construed to mean 'mean and include'. This has the effect of conferring exclusive meaning to the definition as stipulated in the interpretation clause, within the ambit of the statute.

[33] In keeping with the general rule of interpretation of the word 'includes', we are of the view that the term, as used in the interpretation of pawnbroking business under s. 2 of the Pawnbrokers Act 1972, amplifies the scope of the definition, rendering it non-exhaustive and unrestricted.

[34] With the elucidation above in mind, we shall now revisit the first issue, namely, what constitutes "pawnbroking business" pursuant to s. 16(3) of the Pawnbrokers Act 1972?

[35] We observe that s. 2 of the PA 1972 does not explain what is the meaning of "pawnbroking business". The relevant part of the section is reproduced again as follows:

> "pawnbroker" means a person who carries on pawnbroking business;
>
> "pawnbroker's book" means the book referred to in section 14;
>
> "pawnbroking business" includes the business of taking articles in pawn;
>
> "pawner" means a person delivering an article for pawn to a pawnbroker;

[36] The definition instead provides for a part or rather, one of the processes occurring in a pawnbroking business *ie*, taking of articles in pawn. Therefore, we must look into its ordinary or natural meaning first.

[37] The phrase "pawnbroking business" is not available in the dictionary. Instead, these are the definitions of "pawnbroking" and "business" in several dictionaries:

	Pawnbroker	Pawnbroking	Business
Online Oxford Learner's Dictionary	**A person who lends money in exchange for articles left with them. If the money is not paid back by a particular time, the pawnbroker can sell the article.**	–	**The activity of making, buying, selling or supplying goods or services for money; a commercial organization such as a company, shop or factory.**
Online Collins	A pawnbroker is a person who lends people money. People give the pawnbroker something they own, **which can be sold** if they do not pay back the money before a certain time.	The **business of a pawnbroker**	**Business is work relating to the production, buying, and selling of goods or services; A business is an organization which produces and sells goods or which provides a service.**
Online Merriam-Webster	**One who lends money in exchange for personal property that can be sold if the loan is not repaid by a certain time**	–	**A usually commercial or mercantile activity engaged in as a means of livelihood; a commercial or sometimes an industrial enterprise also; dealings or transactions especially of an economic nature**
Black's Law Dictionary (11th Edition)	Someone who lends money, usu. at a high interest rate, in exchange for personal property that is deposited as security by the	–	A commercial enterprise carried on for profit; a particular occupation or employment habitually

	borrower. If the money is not paid back, the pawnbroker **may sell** the personal property.		engaged in for livelihood or gain. "Business" means 'that by which one earns a livelihood.' 'Occupation,' though sometimes used synonymously, is broader term. A man is a lawyer by occupation. His business, *ie*, 'that which busies him,' may be the arguing of cases, or it may be the preparation of briefs, or the care of trust property, or the drawing of deeds, or the searching of titles ... On the other hand, 'business' must not be confounded with 'labor.' A lawyer can writes letters; that is labor, but it is not a kind of business pertaining to his occupation. A typewriter, however, who can write letters, can pursue an important 'business pertaining to his occupation. Marland C. Hobbs, Total Disability in Accident

			Insurance, 4 Harv. L. Rev. 176, ISO-81 (1891)
The Law Lexicon	One who lends money on goods which he receives on pledge; See Turner's Pawn-Broker's-brokers Act; Attenborough's Pawn-brokers Act. A pawn-broker is one who pursues the business of lending money upon interest, and receiving upon deposit as security for the payment of such loan and interest any personal property A pawnbroker has none of the characteristics of a broker, and is not an agent at all. He contracts in his own name, and has no employer, charges no broke-rage, and always property. Neither does he deal possession of in money, notes, and bills of exchange. Like brokers, and his business is to lend money the security of personal on property pawned or left with him. The verbal coincidence of the last two syllables of the longer word being 'broker' is purely fortuitous, for a pawnbroker is not a broker at all. (Ame. Words and Phrases.)		An affair requiring attention and care: that which busies or occupies one's time, attention and labour as his chief concern; mercantile pursuits; that which one does for a livelihood; occupation; employment; as, the business of a merchant; the business of agriculture. See 130 IC 644=1931 Lah 390; 1929 ... The word 'business' is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. *Barendrera Prasad v. IT Officer,* AIR 1982 1 SC 1047, 1953 ...

[38] Having regard to the aforementioned definition in the lexicon, we are of the view that the unembellished and customary meaning of pawnbroking business essentially refers to an individual or entity engaged in the act of advancing funds for commercial purposes by granting a loan in exchange for the provision of a security item.

[39] Having said that, upon closer scrutiny, it is noteworthy that the dictionary further delineates that if the loan amount is not repaid within the stipulated time frame, then the pledged item may be disposed of by the pawnbroker. Now, although that may be, it does not necessarily mean, in our view, that the sale of an unredeemed pledge is to be construed as an integral aspect of the pawnbroking business. We will say more on this later.

Second Issue: Whether Selling Unredeemed Pledges In The Business Premises Is Also Included As Part Of The Pawnbroking Business?

[40] We cannot see how selling the unredeemed pledges is a part of the pawnbroking business based on the following grounds:

(i) the transaction of pawnbroking business, to our minds, concludes once the article becomes the possession of the pawnbroker in the event of the failure by a pawner to redeem the article. The pawnbroker's possession of the unredeemed pledges is automatic if it is valued below RM200 and for articles above RM200, it must go through the auctioning process as stated in s. 23 of the PA 1972. It is our considered view that the pawnbroker's gaining possession of the unredeemed pledges, signifies the end of the pawnbroking transaction;

(ii) the selling of unredeemed pledges, in our view, constitutes a distinct and separate business, namely, the selling of second-hand goods. It occurs after the pawnbroking transaction has ended and thus does not fall under the purview of pawnbroking business;

(iii) by interpreting s. 16(3) of the PA 1972 purposively and by taking into consideration its preamble which reads as follows:

> An Act for the regulation and control of the business of pawnbroking, the protection of pawners and pledges pawned in the course of such business, and matters connected therewith.

[41] It is our considered opinion that the underlying aim of the PA 1972 is not confined to solely safeguarding the interests of the pawner, but also extends to the protection of the safety and security of the items that are pledged as collateral. This objective resonates with the provisions of s. 16(3) of the Act, which unequivocally proscribes the sale of unredeemed pledges to customers within the same premises, owing to the perilous nature of the lending practices that are typically associated with pawnshops. Such a prohibition serves to mitigate the inherent risks of illicit activities, including money laundering, that may be attendant upon the direct sale of unredeemed pledges to customers on the premises.

[42] In essence, the lawmakers have circumscribed pawnbrokers from engaging in any other business activities apart from pawnbroking within the same location as the pawnshops, with the sole intent of ensuring that they

operate in a manner that is transparent, secure, and aboveboard. By confining their operations solely to pawnbroking activities, these entities can be subject to close scrutiny and regulation, thereby promoting compliance with local laws and regulations. This view is supported by the provisions of s. 17A of the Interpretation Acts 1948 and 1967 and the authority of *Selva Vinayagam Sures v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2021] 2 CLJ 29; [2021] 1 MLJ 601 at 621 to 622 paras. 36 to 39.

Our Decision On The Second Issue

[43] For the reasons stated above, we find and hold that the selling of unredeemed pledges in the business premises of the pawnbroker cannot be included as part of the pawnbroking business.

Some Other Issues

[44] We will also address some of the other issues raised by the appellant.

Whether There Is A Trade Custom And Practice To Sell Unredeemed Gold In The Premise As Part Of The Pawnbroking Business

[45] The appellant submitted that it is a trade custom and practice to sell unredeemed gold in the premise as part of the pawnbroking business. They relied on the testimony of SD2, a secretary of the Malaysian Pawnbroker's Association, that selling unredeemed gold in the pawnshop premise is trade custom that has been practised by the pawnees since a long time before until the last two years when KPKT had disallowed them to sell such items in their business premises.

[46] We are of the view that the appellant has failed to establish that such custom or trade practice existed. In order for the appellant to establish that selling unredeemed gold in the licensed premise is a custom and trade practice of pawnbroking business, appellant must prove that the custom was 'notorious, certain and reasonable and does not offend against the intention of any legislative enactment' (*Devonald v. Rosser & Sons* [1906] 2 KB 728 at 743). This test was adopted in *Tan Sri Datuk Paduka (Dr) Ting Pek Khiing v. Hu Chang Pee* [2011] 9 CLJ 859; [2011] 6 MLJ 193 at 203 to 204 where Kwang Hwee Gee JCA (delivering judgment of the Court of Appeal) said:

> [22] To sustain his claim that the custom practised among the logging business community to which they both belonged allowed him to set off his personal debt against debt owed to his company the defendant would have to prove that the custom was 'notorious, certain and reasonable and does not offend against the intention of any legislative enactment' (*Devonald v. Rosser & Sons* [1906] 2 KB 728, at p 743).
>
> [23] We would adopt what Lord Devlin said in *Chan Cheng Kum & Anor v. Wah Tat Bank Ltd & Anor* [1971] 1 MLJ 177 (PC) (Lord Upjohn, Lord Devlin and Lord Pearson) with respect to what is required to be proved to establish the existence of custom of merchants generally:

> Universality, as a requirement of custom, raises not a question of law but a question of fact. There must be proof in the first place that the custom is generally accepted by those who habitually do business in the trade or market concerned. Moreover, the custom must be so generally known that an outsider who makes reasonable enquiries could not fail to be made aware of it. The size of the market or the extent of the trade affected is neither here nor there. It does not matter that the custom alleged in this case applies only to part of the shipping trade within the State of Singapore, so long as the part can be ascertained with certainty, as it can here, as the carriage of goods by sea between Sarawak and Singapore. A good and established custom 'obtains the force of a law, and is, in effect, the common law within that place to which it extends': *Lockwood v. Wood* (1844) 6 QB 50; 115 ER 19, per Tindal CJ at p 64. Thus the custom in this case, if proved, takes effect as part of the common law of Singapore. As such it will be applied by any court dealing with any matter which that court treats as governed by the law of Singapore.
>
> In this sense it is binding not only in Singapore but on anyone anywhere in the world.

[24] The plaintiff offered no such evidence of the existence of such a custom or practice and understandings.

[47] Upon careful scrutiny of the evidence adduced, it is our considered view that the appellant has fallen short of establishing the requisite degree of proof to substantiate the alleged trade custom and practice. We concur with the finding of the learned Magistrate on this point and this is based on the fact that, while SD2's testimony during cross-examination alluded to the existence of pawnbroking shops that engaged in the sale of items, there was a glaring absence of any proof to suggest that such practices were customary and prevalent amongst all pawnbrokers in Malaysia.

[48] In respect of the KPKT's direction, to our minds, if it indeed exists, it merely serves to reinforce the proscription enshrined in s. 16(3) of the PA 1972. It has not escaped our attention that contrary to the appellant's position that the sale of gold has been a longstanding practice until KPKT's direction two years before, the legislative prohibition has, in fact, been firmly in place since 1972, spanning over half a century.

Whether s. 129 Of The Contracts Act 1950 Provides For The Selling Of Unredeemed Pledges To Be Part Of The Pawnbroking Business

[49] The appellant submitted that s. 129 of the Contracts Act 1950 gives the right to a pawnee to sell the unredeemed pledges if the pawner makes a default. It is further submitted by the appellant that this section prescribes that selling unredeemed pledges is also part of the pawnbroking business. Section 129 reads:

A 129. Pawnee's right where pawnor makes default

If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he
B may sell the thing pledged, on giving the pawnor reasonable notice of the sate. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance.

If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

C **[50]** The question arising is whether s. 129 is applicable in our present appeal where the appellant is running a business of pawnbroking, which makes him subject to the PA 1972. In this regard the decision of *PP v. Chew Siew Luan* [1982] CLJ 354; [1982] CLJ (Rep) 285; [1982] 2 MLJ 119 at 119 provides guidance. The Federal Court there considered the question of
D whether the provisions relating to bail in the CPC were applicable to a trafficking charge preferred under the DDA. It was held that the provisions of the DDA will apply to the exclusion of the CPC. This is how Raja Azlan Shah CJ (Malaya) (as His Majesty then was) puts it:

The Dangerous Drugs Act 1952 (Revised - 1980) is an Act specifically
E designed to regulate the importation, exportation, manufacture, sale and use of, *inter alia*, dangerous drugs, and 'to make special provisions relating to the jurisdiction of courts in respect of offences thereunder and their trial, and for purposes connected therewith'. In other words, the Act is in substance a special law passed by Parliament in derogation of the rights of a person concerning the granting of bail in an otherwise ordinary case.
F We further note in particular that section 41B of the Act is an entirely new section introduced by the Dangerous Drugs (Amendment) Act, 1978 (Act A426) and became operative on 10.3.1978. *Generalibus specialia derogant is a cardinal principle of interpretation. It means that where a special provision is made in a special statute, that special provision excludes the operation of a general provision in the general law ...*

G

It would be erroneous to apply expressions used and provisions made in one statute to another and entirely different one in complete disregard of the latter's express stipulations in the light of its specific purpose and object. On the other hand, it is a sound, and, indeed, a well-known principle of construction of a statute that the purport of words and
H expressions used in a legislative measure must take is their colour from the context in which they appear. ... The provisions regulating the granting of bail under the Dangerous Drugs Act must be construed in the context of that Act and not in that of the Criminal Procedure Code and to that extent the general provisions of the Criminal Procedure Code must *ex necessitate* yield to the specific provisions of section 41B of the
I Dangerous Drugs Act in that regard. We should perhaps also observe *en passant* that any other construction would result in nullifying the purport and effect of the provisions of section 41B(1)(c) of the Dangerous Drugs Act ... (emphasis added)

[51] Therefore, following the maxim of *generalia specialibus derogant*, the PA 1972 being the special legislation, takes precedence over the general law of Contracts Act 1950. In other words, s. 129 of the Contracts Act 1950 has no application in this case.

[52] To conclude, we answer the second issue in the negative.

Third Issue: Whether The Act Of Selling Unredeemed Pledges By The Pawnee In The Business Premises Amounts To An Offence Under s. 16(3) Of The PA 1972?

[53] Having determined as to what constitutes pawnbroking business in the first issue and answered the second issue in the negative, we answer the third issue in the positive.

Conclusion

[54] In summary, we find and hold as follows.

[55] With regard to the first issue of what constitutes "pawnbroking business" pursuant to s. 16(3) of the PA 1972:

(i) the word 'includes' in the interpretation of pawnbroking business under s. 2 of the Act has the effect of enlargement – making it non-exhaustive and open-ended; and

(ii) we are of the opinion that the plain and ordinary meaning of pawnbroking business is essentially an organisation/person conducting an activity for commercial purposes by lending money in exchange/on security of an item.

[56] In respect of the second issue of whether selling unredeemed pledges in the business premises is also part of the pawnbroking business, our answer is in the negative. We cannot see how selling the unredeemed pawned article is a part of the pawnbroking business on the following grounds:

(i) the consummation of the pawnbroking transaction occurs once the item in question transitions into the possession of the pawnbroker, consequent to the pawner's default. The automatic transference of possession over unredeemed pledges, with a value not exceeding RM200, and the subsequent auctioning process, as prescribed by s. 23 of the Act for pledges exceeding RM200, unequivocally marks the termination of the pawnbroking transaction;

(ii) on careful scrutiny, we conclude that the sale of unredeemed pledges does not constitute an integral part of the pawnbroking business, given that it represents a distinct and separate business transaction *ie*, the sale of second-hand goods;

(iii) by interpreting s. 16(3) of the Act in a purposive manner, in tandem with its preamble, it is evidently clear that the overarching objective of the PA 1972 is to not only safeguard the interests of the pawner but also the security of the pledges. We observe that the practical effect of the sale of unredeemed pledges within the same premises, an act fraught with substantial risk due to the high-risk lending practices rife within the pawnbroking industry, may engender the compromise of the safety of the pledged items, thereby amplifying the risks of nefarious and illegal activities such as money laundering. Thus, the Legislators have resorted to confining pawnbrokers within the realm of pawnbroking business only, with a view to ensuring that these businesses operate in a transparent, secure, and safe manner. By espousing such an approach, these entities can be effectively monitored and regulated to ensure compliance with extant local laws and regulations.

[57] We are of the view that the appellant has fallen short of the evidential standard to establish the existence of a trade custom and practice. As noted earlier, we are in agreement with the learned Magistrate who had meticulously scrutinised the relevant evidence, that the appellant has failed to demonstrate that the sale of unredeemed pledges of gold items by pawnbrokers in their business premises is a universal practice amongst pawnbrokers in Malaysia.

[58] As regards the purported directive by the KPKT, we have scoured the records but regrettably have found no trace of such directive. Nevertheless, it is our considered view that, if indeed such a directive exists, its effect would merely be to fortify the proscription against engaging in activities other than pawnbroking business as stipulated in s. 16(3) of the PA 1972.

[59] We subscribe to the maxim of *generalia specialibus derogant*, which establishes that where there is a conflict between general and special laws, the latter prevails. Therefore, given that the PA 1972 is a special statute that explicitly regulates pawnbroking business, it takes precedence over the general provisions of the Contracts Act 1950. Consequently, s. 129 of the Contracts Act 1950 has no bearing on the instant matter.

[60] In respect of the third issue of whether the act of selling unredeemed pledges by the pawnee in the business premises amounts to an offence under s. 16(3) of the Act, having earlier determined that the act of selling unredeemed pledges by the pawnee in the business premises is not part of the pawnbroking business within the meaning of s. 16(3) of the Act, we find that such activity, if it is carried out, amounts to an offence under s. 16(3) of the Act.

[61] For the reasons stated above, we find that the High Court has correctly affirmed the decision of the Magistrate's Court in convicting the appellant of the offence charged under s. 16(3) of the PA 1972. We have no reason to disagree with the decision of the High Court to vary the sentence of fine by reducing it to RM5,000.

[62] The appeal of the appellant is accordingly dismissed and the conviction and sentence imposed by the High Court is affirmed.